

SERVED: August 20, 1993

NTSB Order No. EA-3963

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 9th day of August, 1993

_____	)	
JOSEPH M. DEL BALZO,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-11948
v.	)	
	)	
JEFFREY DALE ANDERSON,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent has appealed from the written order of Administrative Law Judge Joyce Capps, served December 5, 1991, granting the Administrator's motion for summary judgment and affirming the Administrator's order revoking respondent's private pilot and mechanic certificates.<sup>1</sup> No hearing was held in this case. For the reasons that follow, we deny respondent's appeal

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<sup>1</sup> Attached is a copy of the law judge's Order Granting Motion for Summary Judgment and Affirming Order of Revocation.

and affirm the law judge's order.

The Administrator's order of revocation (complaint), as amended, alleged that on January 30, 1989, respondent was convicted of conspiring to import, or causing to be imported, marijuana into the United States, in violation of 21 U.S.C. 963; and conspiring to possess with intent to distribute, and distributing, marijuana, in violation of 21 U.S.C. 846. The order further alleged that, in the commission of these crimes, respondent served as an airman and was on board to offload U.S. registered aircraft. Accordingly, the Administrator's order alleged that section 609(c) of the Federal Aviation Act (49 U.S.C. 1429(c))<sup>2</sup> mandates, and section 61.15 of the Federal Aviation Regulations (14 C.F.R. 61.15)<sup>3</sup> authorizes, revocation of

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<sup>2</sup> Section 609(c) provides, in pertinent part:

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person of a crime punishable by death or imprisonment for term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance), if the Administrator determines that (A) an aircraft was used in the commission of the offense or to facilitate the commission of the offense, and (B) such person served as an airman, or was on board such aircraft, in connection with the commission of the offense or the facilitation of the commission of the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated a State or Federal law relating to a controlled substance.

<sup>3</sup> Section 61.15 of the FAR states, in pertinent part:

§61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant

respondent's airman certificates.

The Administrator attached to his motion for summary judgment: 1) a certified copy of the Judgment and Probation/Commitment order (dated January 30, 1989) showing respondent's guilty plea and conviction of the above-described crimes; 2) a certified copy of the criminal complaint underlying respondent's conviction, and attached affidavit of Drug Enforcement Administration special agent Richard Sanders averring that respondent was "a documented member" of a large-scale marijuana smuggling organization, and participated in relocating an aircraft (from Muncie, Indiana to Leitchfield, Kentucky) which was to be used for future marijuana smuggling from Belize, Central America, to Kentucky; and 3) a transcript of testimony (by an unidentified witness) from respondent's sentencing hearing indicating that respondent's role in the smuggling operation was primarily that of an aircraft mechanic, but that "on two occasions he assisted in offloading [marijuana from] the aircraft." The Administrator cited the mandatory revocation provisions of section 609(c) and asserted that, in light of the facts established by these documents, there remained no genuine issues of fact and he was entitled to summary judgment.

In his opposition to the Administrator's motion for summary judgment and his attached affidavit, respondent did not dispute

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or stimulant drugs is grounds for --

\* \* \*

(2) Suspension or revocation of any certificate or rating issued under this part.

his convictions, but denied participating as an airman in connection with those crimes, and denied being on board an aircraft for the purpose of offloading marijuana. The attached affidavits of two of respondent's self-described unindicted co-conspirators stated that respondent's "participation in the conspiracy was limited to performing certain mechanical work on aircraft which were ultimately flown and offloaded by other members of the conspiracy." Although these affidavits were presumably intended to support respondent's contention that he did not serve as an airman in connection with the commission of his crimes, they accomplished quite the opposite, since "airman" is defined in the Federal Aviation Act to include individuals performing "maintenance, overhauling, or repair of aircraft."<sup>4</sup>

In light of respondent's acknowledgement that he served as a mechanic (and therefore, as an "airman") in connection with his drug-related crimes, the only controverted issue of fact raised by his response to the Administrator's motion was whether he was on board an aircraft for the purpose of offloading marijuana.<sup>5</sup>

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<sup>4</sup> The text of section 101(7) (49 U.S.C. 1301(7)) reads, in pertinent part:

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and . . . any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

<sup>5</sup> Respondent also alleges, for the first time in his appeal brief, that there was another issue of fact precluding summary judgment: "whether or not [respondent]'s work for the Kentucky

We note, however, that the statute requires the Administrator to issue an order of revocation upon a person's conviction of certain drug-related crimes involving aircraft whenever he determines that the person either served as an airman or was on board the aircraft in connection with the commission of the offense. Thus, while we agree with respondent that the law judge's granting of summary judgment and affirmance of the Administrator's complaint in its entirety was improper in the face of this controverted fact, we hold that it was not reversible error because revocation would in any event be mandated under section 609(c) by virtue of respondent's admitted service as an "airman."<sup>6</sup> Revocation under these circumstances is also consistent with our precedent under 14 C.F.R. 61.15.<sup>7</sup>

Finally, we address respondent's contention that the

(..continued)

State Police as an aircraft mechanic constitutes the facilitation of law enforcement efforts which would qualify [respondent] for an exception from the mandatory revocation" requirement of section 609(c). (App. Br. at 3.) However, the Administrator's purely discretionary authority to waive the revocation requirement at the request of a law enforcement official in order to facilitate law enforcement efforts (pursuant to section 609(c)(4)) is not a matter appropriate for our review. Administrator v. Booher, NTSB Order No. EA-3733 (1992). Accordingly, even if the law judge had been aware of this asserted "issue" at the time she ruled on the Administrator's motion, it would not have precluded the granting of summary judgment.

<sup>6</sup> See Administrator v. Rawlins, 5 NTSB 2036 (1987), aff'd, Rawlins v. NTSB, 837 F.2d 1327 (5th Cir. 1988) (where statutory criteria are met, section 609(c) mandates revocation of airman certificates).

<sup>7</sup> See Administrator v. Finefrock, 5 NTSB 632 (1985); Administrator v. Pekarcik, 3 NTSB 2903 (1980); Administrator v. Hernandez, NTSB Order No. EA-3821 (1993).

granting of summary judgment deprived him of his constitutional due process rights, and his statutory right (under section 609(c)(3) of the Federal Aviation Act) to a hearing.<sup>8</sup> It is manifest that respondent's right to contest the facts underlying the order of revocation at a hearing does not logically extend to facts which are not disputed. See Administrator v. Palmersheim, NTSB Order No. EA-3370 at 5 (1991) (the statutory right to a hearing does not preclude our law judges from limiting the scope of a hearing to the adjudication of those matters over which a genuine controversy continues to exist after the parties' pleadings have been filed). As noted above, a hearing on the only disputed fact in this case (whether respondent was on board an aircraft to offload marijuana) would have served no useful purpose as respondent had already admitted that he served as an airman in connection with the commission of his crimes and, therefore, fell under the mandatory revocation provisions of section 609(c).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's order is affirmed, except insofar as it affirms the allegation in the Administrator's order of revocation

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<sup>8</sup> Section 609(c)(3) states, in pertinent part:

(3) \* \* \* Any person whose certificate is revoked by the Administrator under this subsection may appeal the Administrator's order to the National Transportation Safety Board and the Board shall, after notice and a hearing on the record, affirm or reverse the Administrator's order.

that respondent was "aboard to offload U.S. registered aircraft" (which allegation is hereby dismissed); and

3. The revocation of respondent's pilot and mechanic certificates shall commence 30 days after the service of this opinion and order.<sup>9</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>9</sup> For the purpose of this opinion and order, respondent must physically surrender his certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).